

J. R. HOLCOMB OIL

IBLA 85-945

Decided February 27, 1987

Appeal from a decision of the Colorado State Office, Bureau of Land Management, imposing additional requirements for approval of assignment of oil and gas lease C-35014.

Affirmed as modified.

1. Administrative Authority: Generally -- Delegation of Authority

A presumption of regularity supports the acts of public officers and, in the absence of clear evidence to the contrary, they are presumed to have properly discharged their official duties.

2. Oil and Gas Leases: Assignments or Transfers

BLM should properly suspend action on a request for approval of an assignment if it receives notice of a dispute between the parties as to the validity of the assignment.

APPEARANCES: Judith A. Holcomb, President, J. R. Holcomb Oil; Marla E. Mansfield, Esq., Office of the Solicitor, Rocky Mountain Region, for the Bureau of Land Management; John B. Skilling, assignor, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

J. R. Holcomb Oil (Holcomb Oil) has appealed from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated August 19, 1985, making approval of an assignment of record title for oil and gas lease C-35014 contingent upon the submission of additional information.

The BLM decision stated:

Initially, the assignment was not properly filed; an original (copy enclosed) and one originally executed copy were filed with this office, while the regulations at 43 CFR 3106.4-1 require that three originally executed copies of assignments of record

title or operating rights be filed with the proper Bureau of Land Management office. Ordinarily, this assignment would have been properly rejected due to the lack of the third originally executed copy; however telephone conversations with a representative of J. R. Holcomb Oil led to the late filing of a third copy of the assignment (copy enclosed for assignor and assignee). This late filing of the third copy established a new filing date (August 13, 1985) for the record title assignment. Therefore, any documentation or reference to the original date of filing no longer pertains.

Before the assignment can be considered for approval, we need John B. Skilling and J. R. Holcomb Oil to advise us that they both consider the assignment still valid, despite the assignment being filed over 90 days after execution, where 43 CFR 3106.1 requires filing before the 90 days expire.

If the above requirement is not met within 30 days after receipt of this decision, the case will be closed as to the assignment without further notice.

Oil and gas lease C-35014 was issued to John B. Skilling (Skilling), effective July 1, 1982. The case file contains two copies of an assignment executed on July 2, 1984, and filed with BLM on January 30, 1985. The July 2, 1984, assignment purported to transfer 100 percent of Skilling's record title interest to Holcomb Oil. Holcomb Oil filed a third copy of the assignment document on August 13, 1985, after the above described telephone conversation with BLM. Skilling's signature on the third copy of the assignment was significantly different from that found on the first two.

According to BLM memoranda to the file, Jane Holcomb of Holcomb Oil claimed she mailed the necessary copies of the assignment on July 9, 1984. However, the assignment instrument was date stamped as having been received on January 30, 1985. A memorandum in the file notes that on March 27, 1985, and July 29, 1985, appellant promised to provide proof of timely filing.

During the 1985 lease year BLM received duplicate rental payments for this lease, one from Skilling and one from Eastern American Energy Corporation, an unapproved pending assignee from Holcomb Oil. On July 30, 1985, Skilling informed BLM that he did not consider his transaction with Holcomb Oil to be completed.

On August 13, 1985, appellant submitted photocopies of a certified mail receipt dated July 9, 1984, for an unidentified mailing to the BLM Colorado State Office, and a sight draft, drawn on the Key Savings and Loan Association (Key Savings), and stamped paid on September 7, 1984. Following receipt of the above described information, BLM issued its decision.

In the statement of reasons for appeal, appellant insists that any contact with Skilling is unnecessary and irrelevant because the documents had been properly filed. Appellant asserts it had an "arrangement" with BLM

under which the documents would be considered to have been filed in a timely manner because appellant submitted a postal return receipt card to prove timely submission.

Skilling also responded to the BLM decision. In his response, Skilling contends appellant did not pay for the lease and the signature on the third copy of the assignment submitted by appellant is a forgery. Skilling also submitted a copy of the Key Savings draft, not stamped paid, as well as a bank communication indicating that, as of January 10, 1985, Key Savings had not honored appellant's sight draft. Skilling attached an additional copy of the assignment which he claims is his retained third copy.

In response to Skilling's allegations, Holcomb Oil states that, at BLM's request, it forwarded a copy of a return-receipt card to show timely submission of the assignment forms, and asserts that BLM misplaced the missing third copy of the assignment. Appellant also insists Skilling executed three copies of the assignment and that Skilling was paid.

[1] When a Federal oil and gas lease is assigned, "[T]hree originally executed copies of assignments of record title or operating rights shall be filed with the proper BLM office on a form approved by the Director or reproductions thereof." 43 CFR 3106.4-1. The necessary documentation must be filed with BLM within 90 days of the execution of the assignment. 43 CFR 3106.1(a). In addition, an assignment is not binding upon the Department until an assignment has been approved by the authorized officer. 43 CFR 3106.1(a).

The case file contains two copies of the assignment document filed 6 months after execution and one copy filed over a year after execution. Appellant claims that all three copies of the assignment were timely filed but one of the three was lost by BLM. There is a legal presumption that administrative officials have properly discharged their duties and not lost or misplaced documents filed with them. The presumption can be overcome by clear probative evidence to the contrary. Homestake Oil & Gas Co., 95 IBLA 61 (1986); Fern L. Evans, 88 IBLA 45 (1985); Don Cook, 60 IBLA 255 (1981).

The party claiming BLM received and subsequently lost a document has the burden of proving that assertion. In this case, appellant offers a receipt for certified mail as evidence. This document indicates only that appellant mailed something to BLM on July 9, 1984. There is nothing on the face of the receipt which would indicate the contents of the envelope or when the envelope was actually received by BLM. What appellant submitted was the receipt for payment and not the return receipt or "green" card. We cannot conclude from this evidence that BLM received any of the copies of the assignment on a date other than that shown on the date stamp found on the face of the documents.

BLM correctly concluded that the assignment was not properly filed. BLM could have rejected the assignment upon receipt because they had been received over 90 days from the date of execution. 43 CFR 3106.1(a). However, rather than reject the assignment, BLM sought further information as to the continued

intent of the parties, in an attempt to establish a new filing date for re-execution. As a result, a serious dispute between the parties became apparent.

[2] BLM has historically declined to adjudicate private disputes involving the validity or effect of a lease assignment and has maintained the status quo until the parties have had an opportunity to resolve their dispute privately or in a court of competent jurisdiction. Charles H. Dorman, 79 IBLA 209 (1984); Fimple Enterprises, Inc., 70 IBLA 180 (1983); William B. Brice, 53 IBLA 174, aff'd, Brice v. Watt, No. C-81-0155 (D. Wyo. Dec. 4, 1981). It is incumbent upon the parties to seek resolution of their dispute, and BLM acted correctly by suspending all action on this assignment. Jack W. Stahl, 93 IBLA 207 (1986). The parties are at liberty to execute new assignment documents, should they agree to do so.
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Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Colorado State Office is affirmed as modified.

R. W. Mullen
Administrative Judge

We concur:

James L. Burski
Administrative Judge

John H. Kelly
Administrative Judge

1/ We note that all statements and submissions made both to BLM and this Board are made under the proscriptions of 18 U.S.C. § 1001 (1982) which provides criminal penalties for the making of false statements. After the parties have resolved this dispute, BLM may wish to consider whether the matter should be referred for investigation to determine if criminal charges should be brought. See Lee S. Bielski, 39 IBLA 211, 86 I.D. 80 (1979).